



APPEALS RESOURCE GUIDE

Prepared by

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July 2012



Table of Contents

SECTION I: GENERAL OVERVIEW	PAGE NO.
Introduction	4
Appeals and Complaints Within SPB Jurisdiction	4
Filing an Appeal or Complaint	5
When to File	7
SPB Appeals Process	7
Remedies	8
Expungement	8
 SECTION II: STATE CIVIL SERVICE – EVIDENTIARY APPEALS	
Adverse Action/Disciplinary Action	10
Lesser Adverse Action	11
Rejection During Probationary Period	12
Medical Termination/Demotion/Transfer	13
Constructive Medical Termination	14
Nonpunitive Termination/Demotion/Transfer (License Revocation/ Restriction)	15
Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest/Name-Clearing Hearing)	16
Termination of Limited Examination and Appointment Program (LEAP) Appointment	17
Termination of Career Executive Assignment (CEA) Appointment	18
Termination/Automatic Resignation of Permanent Intermittent Employee	19
Whistleblower Retaliation Complaint	20
 SECTION III – STATE CIVIL SERVICE – MERIT APPEALS	
Discrimination Complaint/Denial of Reasonable Accommodation	21
Request to File Charges	24
Examination Appeal	25
Withhold From Certification	28
Voided Appointment	29
Medical/Psychological Disqualification/Failure of Pre-employment Drug Test	30
Merit Issue Complaint	31
Dismissed Employee's Request to Take Civil Service Examination	32
Out-of-Class Claim (Examination)	33

SECTION IV – CALIFORNIA STATE UNIVERSITY (CSU) APPEALS	
Dismissal, Demotion, Suspension, Medical Action	35
Request for Reinstatement After Automatic Resignation (AWOL) / AWOL Separation	36
Petition to Set Aside Resignation	37
 SECTION V – COUNTIES WITHOUT APPROVED MERIT SYSTEMS APPEALS	
Disciplinary Action, Medical Action, Automatic Resignation, Layoff, Refusal to Hire, Rejection During Probation (Limited)	39
 SECTION VI – PETITIONS FOR REHEARING	
Petition for Rehearing	41

SECTION I

GENERAL OVERVIEW

Introduction

This booklet provides a general overview of the various appeals and complaints that are decided by the State Personnel Board (SPB or Board). The SPB is a neutral body responsible for administering a merit system of civil service employment within California State government. The SPB's authority to enforce the civil service statutes is set forth in Article VII, section 3 of the California Constitution. As part of its responsibility, the SPB has established administrative procedures to resolve appeals of alleged violations of civil service laws and rules.

The requirements and procedures for filing appeals with the SPB, including the time deadlines for filing such appeals, are set forth in the civil service laws and SPB's administrative regulations (rules). Copies of these laws and rules are available for review in departmental personnel offices, union offices, on SPB's website (www.spb.ca.gov), and the state library.¹ This booklet is a summary reference document and does not supersede existing civil service laws or rules.²

Employees may be able to resolve their disputes informally with their departments without having to file an appeal with the SPB. Employees are, therefore, encouraged to talk to their departments and/or union representatives before filing an appeal with the SPB.

Appeals and Complaints Within SPB Jurisdiction

The following actions may be appealed to or filed with the SPB:

- Adverse Action
- Rejection During Probationary Period
- Medical Termination/Demotion/Transfer
- Constructive Medical Termination
- Nonpunitive Termination/Demotion/Transfer (License Registration / Revocation)
- Termination of Limited Examination and Appointment Program (LEAP) Appointment
- Termination of Career Executive Assignment (CEA) Appointment
- Termination/Automatic Resignation of Permanent Intermittent Employees
- California State University (CSU) Appeals
- Appeals from Counties Without Approved Merit Systems

¹ SPB rules are located in California Code of Regulations, title 2, sections 1 – 549.74.

² This booklet is not intended to provide legal advice. If an employee or applicant has any legal questions, he or she should seek legal advice from his or her union representative or legal counsel.

- Request to File Charges
- Examination Appeal
- Dismissed Employee's Request Permission to take a Civil Service Examination
- Whistleblower/Retaliation Complaint
- Merit Issue Complaint
- Withhold from Certification
- Voided Appointment
- Pre-Employment Medical/Psychological Disqualification
- Failure of Pre-Employment Drug Test
- Out-of-Class Claim (Examination)
- Petition for Rehearing

Filing an Appeal or Complaint

The majority of appeals or complaints listed above may be filed directly with the SPB Appeals Division. Some matters must be filed with the department first; if unresolved, the case can then be filed with the SPB Appeals Division. Information about each type of appeal is available by calling the Appeals Division at (916) 653-0544 or by accessing the Internet at www.spb.ca.gov.

State employees and applicants may file discrimination complaints with the State Department of Fair Employment and Housing (DFEH), Department of Industrial Resources, Division of Labor Standards Enforcement (DLSE), and the federal Equal Employment Opportunity Commission (EEOC). Contact DFEH, DLSE, and EEOC for applicable timeframes and procedures.

California Code of Regulations, title 2, section 52.4 requires that all appeals and complaints be in writing. (Please note SPB rule and Board rule also refers to those regulations adopted by the SPB under California Code of Regulations, title 2.) The SPB provides a form which may be utilized to submit an appeal or complaint on its website. Most appeals and all complaints must clearly identify the facts that form the basis for an appeal or a complaint, all known parties, and specify the remedy or relief requested. Failure to identify the factual basis for an appeal subject to this requirement or any complaint may result in the matter being rejected by the Appeals Division. Further, the appellant or complainant should include a copy of the determination or action that is the subject of the appeal or complaint.

Appeals within SPB's jurisdiction should be filed by email (appeals@spb.ca.gov), but can also be mailed, personally delivered or sent by facsimile transmission (fax) to:

State Personnel Board
Appeals Division
801 Capitol Mall,
Sacramento, CA 95814-4806
FAX (916) 654-6055

Telephone inquiries regarding appeals should be made to the SPB Appeals Division at the following numbers:

General Information:	
Sacramento	(916) 653-0544/653-0799
Status of Appeals	(916) 653-0799
Transcripts, Tapes, Documents and	
Administrative Record Requests	(916) 651-3165
FAX Line	(916) 654-6055
TDD ³	(916) 654-2360
Interpreters	(916) 653-5505

Please see the SPB website at www.spb.ca.gov for additional contacts and information.

When to File

Appeals must be filed with the SPB within the timeframes specified by statute or rule. The filing date is based upon the date the appeal is received at SPB headquarters. If an appeal is not filed within the timeframes set forth in the statute or rule, it will be dismissed absent a legally justifiable reason (good cause).

SPB Appeals Process

Depending on the type of appeal or complaint, the matter filed with the SPB may be sent to an evidentiary hearing before an ALJ, a less formal non-evidentiary hearing before a staff hearing officer, or an investigation by Board staff with or without a hearing. Generally, for most appeals, the SPB is expected to render a decision within six months from the filing of an appeal or 90 days from its submission, whichever is less. The SPB may extend this period by 45 days. However, depending upon available resources, the exact time period to conclude an appeal or complaint may be longer. Evidentiary matters will often take more than six months to complete a hearing, permit parties to brief the case, and obtain a final decision from the Board.

Most SPB hearings are open to the public. A party may be represented by legal counsel or any other person or organization, or may represent him/herself.

³ TDD is a Telecommunications Device for the Deaf and can only be reached from telephones equipped with such a device.

Remedies

The SPB has broad remedial authority when it grants an appeal. Depending upon the type of appeal, remedies may include: reinstatement; back salary, benefits and interest at 7%; change in work assignment and/or location; or assignment of an alternative or passing score on an examination. At present, the SPB does not have authority to award attorneys' fees or monetary sanctions for contempt.

Expungement Of Notices Of Adverse Action From Official Personnel Files

Government Code section 19589 requires appointing powers to remove Letters of Reprimand from an employee's official personnel file within three years of the effective date of the reprimand; however, the appointing power may maintain a copy of the Letter of Reprimand in a separate file, such as a legal file or a supervisory file, and cite to the Letter of Reprimand in subsequent disciplinary actions for purposes of establishing notice and/or progressive discipline. There is no other statutory or regulatory authority governing the removal of notices of adverse action from an employee's official personnel file.

While Section 19589 is the only statute governing the removal of notices of adverse action from an employee's official personnel file, the retention/expungement of such records may be addressed in a memorandum of understanding negotiated by the employee's bargaining unit. Similarly, such matters may also be addressed in any settlement agreement entered into between the employee and the appointing power concerning the specific notice of adverse action.

SECTION II

**STATE CIVIL SERVICE
EVIDENTIARY APPEALS**

Action: **Adverse Action/Disciplinary Action**

Authority: Government Code sections 18670 - 18683 and 19570 - 19593;
California Code of Regulations, title 2, sections 51.1-52.10, 53.3, and
56.1-60.3

Filing Deadline: 30 Days after Effective Date

Adverse actions are formal disciplinary measures taken against state civil service employees. They include dismissals, suspensions, demotions, reductions in salary, disciplinary transfers, and formal/official reprimands. An employee may be disciplined under any of the twenty-four legal causes for discipline as set forth in Government Code section 19572.

When a department takes adverse action against an employee, it must give the employee at least five working days written notice before the action takes effect and copies of the materials upon which the adverse action is based. When the employee receives the notice of the proposed adverse action, he/she has the right to respond verbally or in writing to the department regarding the charges prior to their effective date. An informal Skelly meeting is generally held at which the employee may present his or her response to the proposed adverse action. After the Skelly meeting, the department may continue with, modify or withdraw the proposed adverse action. If the proposed adverse action is not withdrawn as a result of the Skelly meeting, the state civil service employee may file an appeal with the SPB Appeals Division within 30-calendar days⁴ after the effective date of the adverse action. The filing date is based upon the date the appeal is received at SPB headquarters.

SPB will schedule the adverse action appeal for a prehearing settlement conference before an ALJ. If the matter is not resolved, an evidentiary hearing before an ALJ will be scheduled. During that hearing, the department has the burden of proving the charges by a preponderance of the evidence (i.e., the department must show that it is more likely than not that the alleged misconduct occurred)⁵; the employee has the burden of proving any affirmative defenses he or she may raise. The ALJ will review the evidence that is presented to determine whether: (1) the department proved the factual acts or omissions as alleged in the notice of adverse action; (2) if so, whether those acts or omissions constitute legal cause for discipline; and (3) whether the penalty that the department imposed is just and proper for the proven misconduct.

The ALJ will prepare a proposed decision based upon the evidentiary record. That proposed decision may sustain the action, modify the penalty, revoke the action, and/or restore the employee to the position and/or employment list. The proposed decision will be reviewed by the five-member Board at one of its bi-monthly meetings. The Board may adopt the proposed decision, modify (lower) the penalty, reject the decision, and/or remand the decision to the ALJ for further findings. If the Board rejects the proposed decision, the parties will be given an opportunity to purchase the transcript, file written argument, and present oral argument to the Board at a public meeting. The Board will then issue its own decision in the case.

⁴ All days are calendar days unless otherwise specified.

⁵ If the employee is managerial, he/she bears the burden of proof to set aside the action based on fraud, bad faith, or lack of substantial evidence, and the statement of reasons (facts) set forth in the notice of adverse action is presumed true. (Government Code sections 19590-19593).

Action: **Lesser Adverse Action Appeals**

Authority: Government Code Sections 18670-18683, 19576; and California Code of Regulations, title 2, sections 51.1 - 52.10, 53.2 and 55.2

Filing Deadline: 30 Days after Effective Date

Pursuant to Board Rules 53.2 and 55.2 and Government Code section 19576, appeals filed in adverse actions where the penalty imposed is an official reprimand, a suspension without pay for five days or less, or a one-step reduction in pay for four months or less are adjudicated through SPB's investigatory hearing process.

These lesser adverse action hearings are limited to three hours for each party. The formal rules of evidence and procedures do not apply; sworn hearsay declarations are admissible and can support factual findings. The ALJ will submit a short-form proposed decision to the Board. The Board will review that proposed decision in the same manner as it reviews proposed decisions in other adverse actions. The ALJ may convert the matter to a full evidentiary hearing if the facts and complexity of the matter warrant.

Action: **Rejection During Probationary Period**

Authority: Government Code sections 18670 - 18683 and 19170 - 19180; California Code of Regulations, title 2, sections 51.1 - 60.3 and 321 - 327

Filing Deadline: 15 Days after Effective Date

A department may reject an employee during the probationary period for reasons relating to the probationer's qualifications; the good of the service; and/or failure to demonstrate merit, efficiency, fitness, and moral responsibility. The department must give the employee written notice of rejection at least five working days before its effective date and copies of the materials upon which the rejection is based. The notice of rejection must be served prior to the conclusion of the probationary period, but the probationary period may be extended to allow for the 5 working days' notice required by the Skelly rule. The employee may appeal the rejection to the SPB Appeals Division within 15 days from its effective date.

Rejections during probation are part of the selection and examination process within the State civil service system. They are not considered to be discipline or adverse actions. An employee's appeal from rejection during probation may be heard by an SPB ALJ in an evidentiary hearing, assigned to an informal hearing process, or decided by investigation without a hearing. Regardless of the process utilized, the facts set forth in the notice of rejection will be presumed to be true and the employee will bear the burden of either disproving the allegations and/or proving that the rejection was based on fraud, discrimination, or bad faith.

Following consideration of the appeal, a proposed decision will be prepared, which will be reviewed by the Board in the same manner as it reviews proposed decisions in adverse action appeals.

Action: **Medical Termination/Demotion/Transfer**

Authority: Government Code sections 18670 - 18683 and 19253.5; California Code of Regulations, title 2, sections 51.1 - 52.10, 53.3, 56.1-60.3, and 446

Filing Deadline: 15 Days after service of the notice on the Employee

A department may require an employee to submit to a medical examination known as a “fitness for duty” evaluation to determine his/her ability to perform the job. If the results of the evaluation demonstrate that an employee is unable to perform the duties of his/her present position, the employee may be medically demoted or transferred to another position within the department. If the employee is not able to perform the duties of *any* position within the department, and the employee is not eligible for or waives disability retirement, the department may medically terminate the employee.⁶

The department must give written notice of the medical action and the reasons for it at least 15 days before its effective date. The employee may appeal this medical action to the SPB Appeals Division within 15 days after service of the written notice of the medical action. The medical action will be heard by an ALJ in an evidentiary hearing. During the hearing, the department must show by a preponderance of the evidence that it was proper to take the medical action.

After reviewing all the evidence presented during the hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board during one of its regularly scheduled bi-monthly Board meetings.

⁶ If the employee is eligible for and does not waive disability retirement, the department cannot medically terminate the employee. Instead, the department may file with the Public Employees’ Retirement System (PERS) for disability retirement on the employee’s behalf.

Action: **Constructive Medical Termination**

Authority: Government Code sections 18670 - 18683 and 19253.5; California Code of Regulations, title 2, sections 51.1 - 52.10, 53.3, 56.1-60.3, and 446

Filing Deadline: 30 days After the Constructive Medical Termination Occurs

If a department, for asserted medical reasons, refuses to allow an employee to work, but has not served the employee with a formal notice of medical termination, the employee may challenge the department's action by filing a constructive medical termination appeal with the SPB. For example, an employee may file a constructive medical termination appeal when a department refuses to reinstate the employee to his or her position after PERS has denied an application for disability retirement or after the employee's treating physician has released the employee for duty. However, a claim for constructive medical termination is not supported merely because the employee states they are willing, able, and ready to return to work in contradiction to existing medical information. Under some circumstances, an employee may also want to consider filing a complaint of discrimination based upon disability and the failure to provide reasonable accommodation.

An appeal from constructive medical termination must be filed with the SPB Appeals Division within 30 days after the acts giving rise to the appeal occurred. The appeal will be heard by an ALJ at an evidentiary hearing. During the hearing, the employee will have the burden of proving by a preponderance of the evidence that he or she was constructively medically terminated. After reviewing all the evidence, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly meetings.

Action: **Nonpunitive Termination/Demotion Transfer
(License Revocation/Restriction)**

Authority: Government Code sections 18670 - 18683 and 19585; California Code of Regulations, title 2, sections 51.1 - 52.10 and 446

Filing Deadline: 30 Days after Receipt

A department may nonpunitive terminate, demote or transfer an employee who fails to meet a requirement for continuing employment, for example, when an employee's driver's or occupational license, certificate, registration, or other professional qualification is revoked or restricted and that license, certificate, registration or qualification is a minimum qualification for the job. A nonpunitive action is not considered to be discipline or an adverse action.

The department must provide written notice to the employee at least five days before the nonpunitive termination, demotion, or transfer. Within 30 days after receipt of the notice, the employee may file an appeal with the SPB Appeals Division. The employee's appeal will be heard by an ALJ at an evidentiary hearing. During the evidentiary hearing, the department will have the burden of proving that the employee failed to meet a requirement for continuing employment, and the employee will have the burden of proving that the nonpunitive termination was improper.

After reviewing all the evidence presented during the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly Board meetings.

If the Board sustains a nonpunitive termination, when the employee again meets the requirements for employment, the employee may apply for reinstatement with the department. Reinstatement by the department is permissive, and not mandatory.

Action: **Termination of Limited-Term/Seasonal/Temporary Authorization Appointment (Liberty Interest/Name-Clearing Hearing)**

Authority: California Constitution, Article VII, section 5; Government Code sections 18670 - 18683 and 19058 - 19101; California Code of Regulations, title 2, sections 51.1 - 52.10, 63.1, 265, 281, and 282

Filing Deadline: File with the Appointing Authority Within five business days of the effective date of the notice of termination.

If a department terminates an employee's limited term, seasonal or temporary authorization appointment "with fault" or "with cause" for allegedly wrongful behavior that might stigmatize the employee's reputation, seriously impair the employee's opportunity to earn a living, or seriously damage the employee's standing in the community, the employee has a right to file a request for a limited name-clearing hearing with his or her appointing authority. The sole purpose of the name-clearing hearing is to give the employee an opportunity to rebut the charges and remove the stigma. Reinstatement and back salary are not available as remedies in this instance. The request for a limited name clearing hearing must be filed within 5 business days of the effective date of the notice of the termination of the appointment.

The name-clearing hearing will be conducted by a neutral, impartial representative of the appointing authority. During the hearing, the employee bears the burden of proving that the "with fault" or "with cause" designation is improper. After reviewing all the evidence that is presented at the hearing, the impartial decision-maker will determine whether the "with fault" or "with cause" designation will be removed and the termination will reflect that it was without fault. However, the termination of the employee's appointment will remain in effect.

An employee whose limited term, seasonal or temporary authorization appointment is either terminated without fault or is terminated with fault for a reason that does not stigmatize the employee is not entitled to a name-clearing hearing.

The SPB does not conduct name-clearing hearings and does not review the decisions reached in the name-clearing hearing conducted by the appointing authority.

Action: **Termination of Limited Examination and Appointment Program (LEAP) Appointment**

Authority: Government Code sections 18670 - 18683 and 19240 - 19244; California Code of Regulations, title 2, sections 51.1 - 52.10 and 547.50 - 547.57

Filing Deadline: 30 Days after Receipt

An employee appointed under the Limited Examination and Appointment Program (LEAP) may be terminated during the LEAP job examination period for failure to meet conditions for appointment; failure to satisfactorily demonstrate the level of knowledge, skill, and ability required; for other reasons relating to the candidate's qualifications; for the good of the service; or for failure to demonstrate merit, efficiency, fitness, including medical condition, or moral responsibility. A LEAP appointment may also be terminated for these same reasons within 30 days after the exam period ends.

A department must give written notice to the employee at least five working days before the effective date of the termination of a LEAP appointment. When the LEAP employee receives the notice, he/she has a right to respond to the department. If the department does not alter the proposed action after receiving the employee's response, the LEAP candidate may file an appeal with the SPB Appeals Division within 30 days after receipt of the notice of termination. An ALJ will hold a hearing, during which the employee bears the burden of proof, similar to an appeal from rejection during probation.

The ALJ who hears that appeal will prepare a proposed decision, which will be reviewed by the Board during a regularly scheduled Board meeting.

Action: **Termination of Career Executive Assignment (CEA) Appointment**

Authority: Government Code sections 19889 - 19889.4; California Code of Regulations, title 2, sections 548-548.155 and 599.990 - 599.995

Filing Deadline: 30 Days after Receipt

A Career Executive Assignment (CEA) appointment is made to a position requiring a high level of discretion and policy. As a result, an employee who is appointed as a CEA does not obtain permanent status in that appointment. If that CEA appointment is terminated, the employee's appeal rights are limited. Before serving a written notice of termination, the department must inform the CEA employee of its proposed action and allow him/her the opportunity to discuss the termination. The department must serve the CEA employee with written notice stating the reasons for termination 20 days before its effective date. The department must send a copy of the notice of termination to DPA.

Within 30 days after receipt of the notice of termination, the CEA employee may file an appeal with the SPB Appeals Division on the grounds that the termination was based on age, sex, sexual preference, marital status, race, color, national origin, ancestry, disability, religion, religious opinions and affiliations, and political affiliations or opinions. An ALJ will hold a hearing during which the employee bears the burden of proving that the CEA termination was for prohibited discriminatory or political reasons.

The ALJ will prepare a proposed decision, which will be reviewed by the Board at a regularly scheduled Board meeting.

Action: Termination/Automatic Resignation of Permanent Intermittent Employee

Authority: Government Code sections 19100.5 - 19101, and 19996.1; California Code of Regulations, title 2, sections 448 and 599.828

Filing Deadline: 30 Days after Receipt

A permanent intermittent (PI) employee does not have a defined time base and may only work up to a fixed number of hours per year. A PI whose continuity of employment is interrupted by a nonwork period extending beyond one year is considered to have automatically resigned without fault from his/her position. Such separations are limited to non-work periods not covered by approved leave, whether with or without pay. However, the Board has ruled that departments cannot fail to call a PI employee into work for one year and then invoke the automatic resignation provision. Appeals for reinstatement must be filed with the SPB Appeals_Division within 30 days of receipt of notice of separation by automatic resignation.

An appeal from a termination of a PI appointment will be heard by an ALJ at an evidentiary hearing. During the hearing before the ALJ, the PI employee bears the burden of proving he or she had a satisfactory reason for being absent, the rules were improperly applied to separate him/her, and he or she is ready, willing and able to resume employment. After reviewing the evidence, the ALJ will prepare a proposed decision, which will be reviewed by the Board at one of its regularly scheduled bi-monthly Board meetings. If the Board decides to revoke the PI employee's termination, the PI may be reinstated to the employment list, but is not entitled to back salary or future scheduling.

Under DPA rule 599.898, a PI employee who waives three requests by the department to report to work is considered to have automatically resigned without fault from his/her position, unless he/she was unable to come to work due to illness or other good reason. Automatic resignations under this rule are heard by DPA, and not SPB. Appeals for reinstatement from automatic resignation under this rule must be filed with DPA within 30 days of notice of separation by automatic resignation.

Action: **Whistleblower Retaliation Complaint**

Authority: Government Code sections 995.3, 8546.8, 8547 - 8547.11, 18670 - 18673, 18935 and 19683 - 19683.5; Code of Civil Procedure section 2015.5; Penal Code Sections 289.6 and 6129; California Code of Regulations, title 2, sections 67.1 - 67.8

Filing Deadline: Within 12 months of latest reprisal/retaliation

It is illegal for state officers and employees to retaliate against a state civil service employee or applicant for state civil service appointment for reporting improper governmental activity or for refusing to obey an illegal order. If an employee/applicant has been subject to retaliation because he/she has made a protected disclosure and/or refused to obey an illegal order, he/she may file a whistleblower retaliation complaint with the SPB.

Retaliation complaints must be filed with the SPB Appeals Division within 12 months from the most recent act of reprisal. A complaint of retaliation must be accompanied by a written sworn statement. The complaint must describe the specific retaliatory act(s); the date(s) of the act(s); and the reason the complainant believes that the act(s) occurred in retaliation for the complainant's having made a protected disclosure or having refused to obey an illegal order. The complaint should also state either when the protected disclosure was made, or when and who issued the illegal order.

All whistleblower retaliation complaints are reviewed to determine if SPB jurisdiction exists. Whistleblower retaliation complaints are reviewed in accordance with the procedures set forth in Government Code section 19683. A whistleblower retaliation complaint may be consolidated with another appeal pending before the Board between the same parties, including an adverse action, medical action or rejection during probation. An appellant may also raise whistleblower retaliation as an affirmative defense during an evidentiary hearing in an adverse action, medical action or rejection during probation appeal.

If the whistleblower retaliation complaint is not consolidated with another pending action, SPB hearing officer will conduct an informal hearing into the allegations. After the informal hearing is concluded, the hearing officer will prepare a proposed Notice of Findings to be reviewed by the SPB's Executive Officer. After review by the Executive Officer, the Notice of Findings will be issued. If the Notice of Findings concludes that the appointing power, supervisor or manager engaged in illegal whistleblower retaliation, the appointing power, supervisor or manager may request a hearing regarding the Notice of Findings within 30 days of the issuance of the Notice of Findings. If the Board grants the request for an evidentiary hearing before an ALJ, the employee/applicant will bear the burden of establishing, by a preponderance of the evidence, that making protected disclosures and/or refusing to obey an illegal order was a "contributing factor" in the department's adverse employment action against the employee/applicant. If he/she meets that burden, the burden will then shift to the employer to establish by "clear and convincing evidence" that it did not retaliate against the applicant or employee and that the adverse employment action occurred for legitimate, independent reasons.

If a whistleblower retaliation appeal is heard by an ALJ, the ALJ will prepare a proposed decision that will be reviewed by the Board at a regularly scheduled Board meeting.

SECTION III

STATE CIVIL SERVICE
MERIT APPEALS

Action: **Discrimination/Harassment/Retaliation/Denial of Reasonable Accommodation Complaint**

Authority: Governor's Reorganization Plan Number 1 of 2011, effective July 1, 2012.

Filing Deadline: N/A

As a result of the Governor's Reorganization Plan Number 1 of 2011, effective July 1, 2012, the SPB will no longer accept complaints of Discrimination/Harassment/Retaliation/Denial of Reasonable Accommodation. However, the California Department of Fair Employment and Housing (DFEH) will continue to accept employment discrimination complaints. To file a complaint or contact the DFEH, please call (800) 884-1684 or email the DFEH at contact.center@dfeh.ca.gov. You may also consider filing a complaint with the Equal Employment Opportunity Commission (EEOC). Information on how to file a charge of employment discrimination with the EEOC can be found at <http://www.eeoc.gov/employees/howtofile.cfm>.

Action: **Request to File Charges**

Authority: Government Code sections 18670 - 18683 and 19583.5; Code of Civil Procedure section 2015.5; California Code of Regulations, title 2, sections 51.1 - 52.10

Filing Deadline: Within One Year of Events Giving Rise to Request

An individual may file a request to file charges seeking adverse action against a State civil service employee for one or more of the causes for discipline set forth in Government Code section 19572.⁷ Charges filed by a State employee shall not include issues covered by the State's employee grievance or other merit appeal processes until those appeal processes have been exhausted. The written request must clearly state the legal cause for discipline as set forth in Government Code section 19572. The request must be in writing and contain a statement of proposed charges. Additionally, the request must be under penalty of perjury, limited to fifteen pages, and may be accompanied by sworn declarations based on personal knowledge. The request must describe the charges in sufficient factual detail to allow for an investigation and to enable the accused employee(s) to prepare a defense. The request must be filed with the SPB Appeals Division within one year of the actions alleged to warrant discipline. The individual must include sufficient copies of the request and all attachments in order for the SPB to serve the appointing authority and each employee against whom disciplinary action is sought.

All requests to file charges are investigated to determine if SPB jurisdiction exists. SPB will provide copies of the request to the relevant department and the person against whom the charges are alleged and ask for responses to the request in writing.

SPB staff will conduct an investigatory review and then make a recommendation to the Board as to whether the request should be granted or denied. The staff recommendation will be reviewed by the Board at a regularly scheduled Board meeting.

If the Board grants a request to file charges, the employee who is charged will be allowed to answer. The matter will be assigned to an ALJ, who will conduct an evidentiary hearing. The person/entity initiating the request bears the burden of proving, by a preponderance of the evidence, the factual allegations, legal causes, and penalty. At the conclusion of the evidentiary hearing, the ALJ will prepare a proposed decision, which will be reviewed by the Board at a regularly scheduled Board meeting.

⁷ The law does not permit the filing of request to file charges by current wards or inmates of the California Youth Authority or the Department of Corrections.

Action: **Examination Appeals (Individual, Group, Career Executive Assignment [CEA] and LEAP)**

Authority: California Constitution, Article VII, section 1(b); Government Code sections 18670 - 18683, 18900, 18930.5, 18952, and 19244 (LEAP); California Code of Regulations, title 2, sections 51.1 - 53.1, 54.1, 56.4, and 548.30 - 548.52

Filing Deadline: 30 days

When a competitor is notified that his/her civil service examination application is not accepted or a competitor contends that laws and/or rules were violated in an examination, the competitor may file an appeal with the SPB Appeals Division.

There are four grounds for which an appeal will be accepted. Each requires supporting facts and evidence (excluding CEA and LEAP examinations). These grounds are: fraud; discrimination; erroneous interpretation or application of minimum qualifications (MQs); or a significant irregularity in the examination process. These reasons are further described below.

The appeal must be in writing and state the facts, information, or circumstances upon which the appeal is based. A copy of the notice of examination results should be included with the appeal. The appeal must contain the appellant's name, mailing address, and telephone number where the appellant can be reached or a message can be left. If a copy of the examination results is not included, the appeal must specify the title of the exam, the date of the exam, and the name of the department conducting the exam. Appeals from qualification appraisal interviews must be filed within 30 days of the date that examination results are mailed to the Appellant. Appeals from written examinations must be filed within 30 days of the date the examination results were mailed to the Appellant. The appeal should include a copy of the appointing authority's determination.

Discrimination

Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination based on race, gender, color, religion, national origin, physical or mental disability, age, political affiliation, ancestry, marital status, sexual orientation, or political or religious opinion. The appeal must establish a connection between the complained of activity and the individual's status as a member of a protected class.

Appeals alleging discrimination based on reasons other than the individual status as a member of a protected class (such as alleged discrimination based on geographical location or work unit) will not be accepted.

Fraud

In order to establish a cause of action for fraud, the competitor usually must show: 1) misrepresentation (false representation, concealment, or non-disclosure); 2) knowledge of falsity; 3) intent to defraud (i.e., to reduce reliance); 4) justifiable reliance and 5) resulting injury.

The SPB does not accept exam appeals based solely on an appellant's belief that a competitor cheated in the examination. If cheating does occur, it should be brought to the attention of the testing department or the SPB Examination Unit. The names of persons found to have cheated may be removed from the certification list by the SPB Personnel Resources and Innovation Division.

Erroneous Interpretation or Application of Minimum Qualifications

If an appeal is filed based on the rejection of an application due to the appellant not meeting the minimum qualifications of a classification, then the appellant must state why he/she believes his/her experience, and/or education meet the minimum qualifications. If the appellant does possess the minimum qualifications, he or she will be placed into the examination. The appellant must show that he or she meets all the minimum qualifications; it is not sufficient for the appellant to show that he or she has the general qualifications and/or ability to perform the duties of the class.

The SPB will consider "erroneous interpretation or application of minimum qualifications" to have occurred when there is an inaccurate analysis of the appellant's qualifications to compete in the examination and, as a result, an otherwise qualified applicant is not permitted to compete. Once an appellant is admitted to the examination, he/she must then compete with the other candidates in order to obtain a place on the eligible list.

The minimum qualifications are legal requirements that must be met by all job applicants before they are allowed to compete in State civil service examinations for the class. The Appeals Division staff is not empowered to change or modify these requirements.

Significant Irregularity

Examinations for the establishment of an eligible list must be competitive and administered fairly to test and determine the qualifications, fitness, and ability of competitors to actually perform the duties of the class being examined. Departments have considerable flexibility in the methods by which an examination may be conducted. As such, there are a variety of examination tools currently being used including, but not limited to: Written, Promotional Readiness Evaluation, Work Sample, Supplemental Application, Performance-Structured Interview, Internet Based, Low-fidelity Simulations, Oral Interview, and In-basket Exercises.

A significant irregularity occurs when the examination is not administered in accordance with the examination plan outlined on the bulletin or the examination method was not applied fairly to all competitors.

Remedies

Appellants who are successful in the examination appeals process typically are granted one of the following remedies: entry into the examination; re-administration of the examination; or an “alternate score” (interview panel assigns alternate scores only when a candidate is eliminated from the examination for not meeting the minimum qualifications).

- Group Examination Appeals

This is an appeal filed by one or more competitors and, if the charges are found to be valid, the entire eligible list may be impacted. In such cases, the Board will consolidate the appeals and address the relevant issues. The mere fact that a large number of filers have appealed an examination does not, in itself, constitute a group appeal.

- Copy of Interview Tape and/or Disqualification-rating Sheet

Competitors may obtain a copy of their interview tape and/or disqualification rating sheet from the department conducting the examination.

- Career Executive Assignment (CEA) Examination Appeals

Within 30 days after the "Report of Appointment to a CEA Position" is submitted to the executive officer, an employee who is otherwise eligible for appointment to the CEA category may appeal to the Board on the grounds of irregularity, fraud or discrimination in the conduct of the examination.

If, upon review of the record of the examination, the Board finds fraud or discrimination, it may cancel the examination and appointment and require the appointing power to repeat the competition. The Board may also order appropriate corrective action as a remedy.

If the Board finds irregularity in the conduct of the examination, the Board may cancel the appointment and/or order a new examination only if it is determined that the irregularity materially affected the appointment made as result of the examination. Appeals based on a challenge of the qualifications of the person appointed as result of an examination usually will be heard only upon the grounds that such person was not well qualified, and/or was not carefully selected.

Limited Examination and Appointment Program (LEAP) Examination

Applicants for, and candidates in, the LEAP examination process may appeal, in accordance with Board rule, any of the following actions: 1) a rejection of an application to participate in an examination; 2) a disqualification by an interview panel or by any other selection method use; or 3) a denial of a request for reasonable accommodation during the job examination period.

Action: **Withhold from Certification**

Authority: Government Code sections 18670 - 18683 and 18935; California Code of Regulations, title 2, sections 51.1 - 52.10, 172, 211 and 213.6

Filing Deadline: 30 days

If an applicant receives a passing score on a civil service examination, but is subsequently notified that his/her name is being "withheld" from the employment list, he/she may appeal the action to the SPB Appeals Division. The appeal must specify the employment list from which the name is withheld; the date notified of the action; the basis stated by the department for withholding the name; and the applicant's responses or rebuttal to the reason(s) stated by the department for taking the withhold action. Withhold appeals must be filed with the SPB Appeals Division within 30 days of the date the notice is mailed to the Appellant. The appeal should include a copy of the appointing authority's determination.

All withhold appeals are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Appellants must submit a written response to departmental information to the SPB Appeals Division within 20 days after receipt of the departmental file. If the information is not submitted, the appeal will be dismissed. Most appeals are resolved through investigation and/or written determination. An informal hearing may be scheduled in a limited number of cases if the facts warrant it.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Voided Appointment**

Authority: Government Code sections 18670 - 18683, 19257 and 19267.5; California Code of Regulations, title 2, sections 8, 9, 51.1 - 52.10 and 266 - 266.3

Filing Deadline: 30 days

An individual's appointment to a position in a civil service job classification may be voided because of fraud or irregularity in the appointment process, such as appointment from an expired employment list, or because minimum qualifications for the job are not met. If an individual is notified that his/her appointment has been voided, he/she may file an appeal with the SPB Appeals Division within 30 days of the date the notice is mailed to the Appellant. The appeal should include a copy of the determination rendered by the State Personnel Board's Appointments Consultation Unit.

All appeals of voided appointments are investigated to determine if SPB jurisdiction has been established and if sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to an informal hearing before a staff hearing officer.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Medical/Psychological Disqualification; Failure of Pre-employment Drug Test**

Authority: Government Code sections 1031(f), 18670 - 18683; California Code of Regulations, title 2, sections 51.1 - 52.10 and 172.1 – 172.11

Filing Deadline: 30 days from the date of service of the notice

If an applicant or employee is medically disqualified or qualified with medical restrictions (e.g., may not climb ladders, lift more than 50 lbs., etc.) and disagrees with the medical evaluation, he/she may file an appeal with the SPB Appeals Division. The appeal must state the job classification from which he/she was medically disqualified or restricted and the basis for disagreement with the medical decision, such as conflicting or supplemental information from another physician indicating that the individual can perform the job duties; stable work history information; and/or participation in physical fitness or activities programs indicating the medical condition has not affected the person's ability to perform in similar work or life activities.

If the applicant or employee is disqualified from a law enforcement class for psychological reasons, he/she may appeal the disqualification. The individual must seek an independent opinion at his/her own expense before the hearing.

If the applicant fails a pre-employment drug test, the appeal is limited to the following grounds: the drug was obtained legally; there was a violation of the test protocol or chain-of-custody procedures; or there was another irregularity that invalidates the test results.

Appeals must be filed with the SPB Appeals Division within 30 days of the date of service of the notice of disqualification, restriction or failure of the drug test.

All appeals from medical/psychological disqualification or restriction and from failure of the pre-employment drug test are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred for an informal hearing before a staff-hearing officer.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Merit Issue Complaint**

Authority: Government Code sections 18670 - 18683; California Code of Regulations, title 2, sections 51.1 - 52.10, 66.1, 548.61

Filing Deadline: Must file with Department; 30 days after Department Response, File with SPB

SPB laws and rules require that appointments and promotions within the State civil service be made on the basis of merit. Merit issue complaints include, but are not necessarily limited to, interference with promotional opportunities; disputes regarding the effective dates of appointments or promotions; and applicability of alternate salary ranges. Additionally, an employee who believes they have been discriminated against within the State civil service because of political affiliation or opinion may also file a merit issue complaint. The complaint must be filed with the department responsible for the alleged act or decision. The personnel office should be contacted regarding the time for filing a merit issue complaint and the agency's levels of review.

Departments must respond to merit issue complaints within 90 days. An applicant or employee may appeal to the SPB Appeals Division within 30 days after (1) the department denies the complaint or (2) the 90 days expires without a department's decision on the complaint. The appeal should include a copy of the appointing authority's determination.

All merit issue complaints are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Merit issue complaints are assigned to investigative review by an Investigatory Officer pursuant to section 53.2.

Many complaints are resolved through investigation and/or written determination. If not, they are referred to an informal hearing before a staff-hearing officer.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Dismissed Employee's Request to Take Civil Service Examination**

Authority: Government Code sections 18670 - 18683 and 18935; California Code of Regulations, title 2, sections 51.1 - 52.10 and 211

Filing Deadline: 30 days from the date of receipt of the Executive Officer's decision

An employee dismissed from the State civil service is not permitted to take any state examination or be certified to any position in the state service without the consent of the SPB Executive Officer as stated in California Code of Regulations, title 2, section 211. If the SPB Executive Officer refuses to consent, the dismissed employee may appeal to the SPB Appeals Division within 30 days after receipt of the decision.

All requests to test, or for certification, are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to an informal hearing before a staff hearing officer.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

Action: **Out-of-Class Claim (Examination)**

Authority: Government Code sections 18670 - 18683; California Code of Regulations, title 2, sections 51.1 - 52.10 and 212

Filing Deadline: 30 days

California Code of Regulations, title 2, section 212 specifies procedures for approval of out-of-class work experience to meet the minimum qualifications for a civil service examination. The department's denial of such a request may be appealed to the SPB Appeals Division within 30 days of receipt of notice of the denial.

Appeals involving the performance of out-of-class experience must be documented in accordance with Section 212. A presumption is made that a person in a class is performing at least the minimum duties and responsibilities of the class as outlined in the specification. The Board will not consider any other duties not assigned to the classification unless the appellant produces a properly authorized Training and Development (T&D) assignment as established under SPB rules, or a valid out-of-class certification by the proper authority within the department.

All requests to use out-of-class experience in a civil service exam are investigated to determine if SPB jurisdiction has been established and sufficient facts are alleged to constitute grounds for the appeal. Many appeals are resolved through investigation and/or written determination. If not, they are referred to an informal hearing before a staff hearing officer.

Following the informal hearing, a decision with findings and a recommendation is prepared and reviewed by the Board.

SECTION IV

CALIFORNIA STATE UNIVERSITY
(CSU)
APPEALS

Action: **Dismissal, Demotion, Suspension, Medical Action**

Authority: Education Code sections 89535 - 89540

Filing Deadline: 30 Days after Service

Discipline by dismissal, demotion or suspension may be taken against employees of the California State University (CSU). Education Code section 89535 sets forth nine legal causes for discipline of CSU employees. Under the Education Code, a CSU employee who is physically or mentally unfit for his/her position may be suspended, demoted or dismissed under the same procedures used for disciplinary actions.

Notices of dismissal, demotion, or suspension for cause of a CSU employee, including a lack of physical and mental fitness, must be in writing, signed by the Chancellor or his designee, and served on the employee. The CSU employee must file an appeal with the SPB Appeals Division within 30 days⁸ of service.⁹ The appeal may claim that the required procedure was not followed; there are no grounds for the action; the penalty is excessive, unreasonable, or discriminatory; the employee did not do the acts or omissions alleged, and/or that the acts or omissions were justified.

The hearing follows the same procedures as in state civil service appeals. Proposed decisions are reviewed by the Board as in appeals from adverse action.

⁸ All days are calendar days unless otherwise specified.

⁹ CSU employees may also appeal the medical action to DFEH as discriminatory.

Action: **Request for Reinstatement After Automatic Resignation as Absent Without Leave (AWOL) / AWOL Separation**

Authority: Education Code section 89541

Filing Deadline: 15 Days/90 Days after Service/Effective Date

A CSU employee who is voluntarily or involuntarily absent without leave (AWOL) for five consecutive working days is considered to have automatically resigned from service as of the last day he/she worked. When the CSU employee receives notice of his/her automatic resignation, he/she must request reinstatement in writing from the SPB Appeals Division within 15 days of service of the notice. If the employee does not receive written notice, he/she must file a written appeal for reinstatement with the SPB Appeals Division within 90 days of the effective date of separation. An informal Coleman hearing is available to the CSU employee, similar to AWOL separations of state civil service employees appealed to DPA.

The Board may grant reinstatement only if the CSU employee provides a satisfactory explanation for his/her absence and failure to obtain leave, and indicates that he/she is ready, able, and willing to return to work or has obtained the campus' approval for a leave of absence.

The employee is not entitled to back salary even if reinstated, and bears the burden of proving all three grounds for reinstatement.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse actions.

Action: **Petition to Set Aside Resignation**

Authority: Education Code section 89542

Filing Deadlines: 30 Days after Last Date Worked/Submitted

A CSU employee may petition to set aside his/her oral or written resignation on the grounds of mistake, fraud, duress, undue influence, or any other reason alleging it was not a free, voluntary and binding act. A petition to set aside the resignation must be filed with the SPB Appeals Division within 30 days from the last day worked or the date of submitting the resignation, whichever is later.

The employee bears the burden of proving that the resignation should be set aside. The same procedures are used as in state civil service employee petitions to set aside resignations appealed to DPA. If the resignation is set aside, the employee is reinstated to his/her former position and paid back salary.

Proposed decisions are prepared and reviewed by the Board as in appeals from adverse action.

SECTION V

**APPEALS FROM EMPLOYEES
OF COUNTIES WITHOUT
APPROVED
MERIT SYSTEMS**

Action: **Disciplinary Action, Medical Action, Automatic Resignation, Layoff, Refusal to Hire, Rejection during Probation (Limited) for Local Government Agencies**

Authority: Government Code sections 19800 - 19810, California Code of Regulations, title 2, sections 17010 - 17592

Filing Deadline: 30 Days after Notice or Date of Action

The SPB administers merit systems and personnel standards for local government agencies where required by statute due to a state-funded program or a federal grant-in-aid program established under federal law.

The SPB hears and decides appeals from specified actions that are filed by employees working for counties without approved merit systems. These are:

- Involuntary Demotion, Dismissal, and Suspension
- Medical Termination or Transfer
- Automatic Resignation
- Reduction in Pay for Disciplinary Reasons or Other Disciplinary Action that Affects the Employee's Present Status
- Layoff
- Refusal to Hire from a Reemployment List
- Grievances Involving Discrimination or Political Affiliation, if not Resolved Locally
- Rejection During Probation, if Based on Discrimination or Political Affiliation

There are 11 causes for disciplinary action in Title 2, California Code of Regulations, section 17544, governing local agency personnel standards. A county department taking disciplinary action must give the employee written notice at least five working days before its effective date. Prior to the effective date of the action, the employee has the right to respond verbally or in writing regarding the charges in an informal Skelly meeting similar to that conducted in state civil service disciplinary actions.

The county bears the burden of proof in disciplinary and medical actions. The employee bears the burden of proof in the remaining appeals.

The county employee may file an appeal, specifying the facts and relief requested with the SPB Appeals Division within 30 days¹⁰ after notice or from the date of the action.

¹⁰ All days are calendar days unless otherwise specified.

SECTION VI

PETITIONS FOR REHEARING

Action: **Petition for Rehearing**

Authority: Government Code sections 19586 and 19587; SPB rules 51.1 - 52.10

Filing Deadline: 30 days after Service of Decision

A party dissatisfied with the Board's decision in an appeal may challenge the Board's written decision by filing a petition for rehearing. The Board will grant a petition for rehearing only if the requesting party shows that due process was denied in the original hearing; new and compelling information now exists that was not available at the time of the original hearing; factual findings were made and/or omitted in error; and/or the decision contains legal errors.

The petition for rehearing must be filed with the SPB Appeals Division within 30 days of service of the SPB decision. If the petition is not timely filed, the decision becomes final. If the petition is timely filed, the opposing party will be asked to file a response. The petition and response will be forwarded to the SPB for review and decision at a bimonthly Board meeting.

The SPB has 60 days to act once it has received the petition and the response. If it does not act within 60 days, the petition will be deemed denied. If the petition is denied, the SPB decision will become final. A petition for rehearing need not be filed to exhaust administrative remedies.

If the petition is granted, the transcript of the hearing (if one was held) will be ordered, and the parties may be afforded an opportunity to purchase the transcript, file written argument, and present oral argument. After reviewing the record and the written and oral arguments of the parties, the Board will issue a new decision. If the SPB grants a petition for rehearing of a precedential decision, that precedential decision will be vacated and will no longer be considered precedential.